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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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PHILIPPINES: Failure to investigate and prevent widespread attacks on human rights defenders

The Asian Legal Resource Centre (ALRC) welcomes the report of the Special Rapporteur on the situation of human rights defenders (A/HRC/28/63). We take note of the Special Rapporteur's emphasis on the importance of "preventing violations against defenders (para. 6)." In General Assembly Resolution (A/RES/68/181 para. 9), states are called upon to "exercise due diligence in preventing violations and abuses" against defenders in line with their primary responsibility to promote and protect rights.

The ALRC takes note of the enormous challenges that defenders face in advocating for and protecting fundamental rights and freedoms, notably the poor and the oppressed, comprising a majority of the Filipino population. The GA's Resolution (A/RES/68/181) takes note of the "historical and structural inequalities in power relations" as the root causes whereby the rights of defenders are "violated or abused and their work stigmatized." These are real challenges to which we would like the Council to pay attention.

The Philippine government has however failed in practice or disregarded what the Rapporteur and the Resolution wanted it to achieve: preventing, protecting, and redressing violations committed against defenders, as a primary responsibility. In the period covered in the Rapporteur's report, the ALRC has also observed a renewed pattern of targeted widespread and systematic attacks against defenders—including extrajudicial killings, arbitrary arrest and detention, fabrication of charges, and threats and intimidation. In 2014 alone, the ALRC has documented 30 cases of attacks on defenders; in these attacks, 17 persons were killed, two tortured, seven threatened, and one disappeared.

Of the dozens of appeal letters the ALRC's sister organisation, the Asian Human Rights Commission (AHRC), sent to the government—asking for it to investigate cases of extrajudicial killings, threats, overt and covert surveillance on defenders—those that received replies are "often general or evasive". The Rapporteur has also noted this feature of government communication. The ALRC has observed that these responses are for the purpose of protecting the government from international criticisms, rather than protecting the rights of defenders or redressing their grievances.

We commend the Rapporteur's plan to strengthen the use of communications, notably on cases that require urgent attention, and launching of joint appeals with other special procedures. This, however, could function only when the state cooperates and acts promptly on communications sent to it. The ALRC's experience in communicating with the government has been unsatisfactory; the government is either selective in responding to cases or it does not respond at all. Not to respond to urgent appeals and communications, the ALRC has observed, has been a common practice of the government.

On April 30 last year, two unidentified men were found overtly following the ALRC's Deputy Director, Danilo Reyes, in Quezon City, Metro Manila. One of the men was carrying a short firearm. Mr. Reyes had been attending a consultation on prevention of torture organized by the Philippines Commission on Human Rights (PCHR). Reyes's participation was upon the invitation of the PCHR. Following the incident, Mr. Reyes reported the incident to the police. The ALRC has since expressed concern and sought explanation why the intelligence agents were present during the PCHR meeting, something that was not relayed to Mr. Reyes. To date, no investigation has been conducted, and there has been no reply from the PCHR.

The ALRC would like to draw the Council's attention that Mr. Reyes is one of the "persons who cooperates with the United Nations or international organisations" who requires protection from reprisals. The overt surveillance of Mr. Reyes took place a month after he provided information to the Rapporteur's office, upon its request, about cases involving attacks on defenders, and over a year after his oral intervention at the conclusion of the Philippine Universal Periodic Review during the 21st HRC Session.

In fact, the communications involving attacks on eight human rights defenders in the Philippines (A/HRC/27/72, p. 9, 14, 19), considered in the Report of the Special Procedures, is based on information collected by Mr. Reyes and

submitted to the Special Procedures via the AHRC's Urgent Appeals Program. Mr. Reyes has also informed the office of the Rapporteur on human rights defenders about his case but is not aware of action taken, if any. The ALRC, therefore, expresses concern on the competence of the PCHR, in the light of Mr. Reyes's case, to carry out its "primary role in protection" (A/HRC/28/63, para. 68).

The ALRC is not aware of any action taken by the Philippines government to redress the killing of Siche Gandinao, killed by soldiers on March 10, 2007, after she testified to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Professor Philip Alston, during his country visit in 2007. During the 11th Session of the HR Council, ALRC asked whether there were "any credible actions taken by the government to investigate her death (ALRC-COS-11-10-2009)[1]". However, to date, the ALRC is not aware whether the perpetrators have been punished or not.

In addition to the Rapporteur's report (A/HRC/28/63, para. 31), although the Philippines judicial system and legal framework may have their own weaknesses and flaws, they are highly efficient and robust when it comes to pursuing criminal prosecutions against defenders. In ALRC's written submission during the HR Council's 10th, 19th, and 27th Session, the ALRC raised concern on the abuse of the legal system to prosecute defenders (A/HRC/10/NGO/89; A/HRC/19/NGO/51) and the failure of the government to prevent arbitrary detention arising from this abuse (A/HRC/27/NGO/67).

The ALRC welcomes the Resolution (A/RES/68/181, para. 8, 10), which calls upon the state to ensure that defenders are not subject to "excessive and indiscriminate use of force, arbitrary arrest or detention, torture, enforced disappearance, and abuse of criminal and civil proceedings" and to ensure that promotion and protection of human rights "are not criminalized or met with limitations". Section 15, Article XIII, of the 1987 Constitution does recognize the role of individuals and groups pursuing "legitimate and collective interests and aspirations through peaceful and lawful means"; however, this robust constitutional right remains only on paper.

The ALRC also expresses its deep concern on the continued labelling of human rights defenders as "enemies of the state". Those labelled "enemies of the state" are systematically targeted for extrajudicial killings, threats, overt surveillance, and fabrication of charges. A report by Lawyers for Lawyers notes that 39 lawyers, mostly "handling high profile cases, such as land reforms, corruption and election-related issues," have already been killed since 2004. Targeting lawyers deprives not only victims and defenders their pursuit of redress in courts, it also effectively obstructs any demands to hold the government accountable, because the case would possibly not be heard in court as a result, and would not have substantial progress, let alone result in the punishment of any perpetrators.

The ALRC welcomes the abolition of Inter-Agency Legal Action Group (IALAG) upon recommendation of Professor Philip Alston in his follow-up report in April 2009 (A/HRC/11/2/Add.8); however, while the structure has been abolished, how the prosecutors operate still remains; they are acting as "team players" with the Armed Forces of the Philippines and Philippine National Police (PNP) in counterinsurgency operations." In fact, we have observed an increasing trend of the filing of fabricated charges against persons (defenders) perceived by the government as "enemies of the state" and "purported front groups" of the Communist Party.

The ALRC welcomes the arrest of Jovito Palparan Jr., a retired military general, wanted on charges of kidnapping and serious illegal detention, by the National Bureau of Investigation (NBI), in Sta. Mesa, Metro Manila, on August 12, 2014. Palparan's arrest happened nearly two years after the ALRC called upon Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions, in ALRC's oral intervention (ALRC-COS-20-102012) in the 20th Session of the Council. The ALRC urged Mr. Heyns to closely follow the progress of Palparan's trial, and ensure the speedy and the prompt conclusion of the cases against him in court.

[1] Asian Legal Resource Center (2009) ASIA: Impunity continuing unabated concerning extra-judicial killings, at: http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc11/ALRC-COS-11-10-2009

The ALRC is aware that the arrest, detention, and trial of perpetrators are only the beginning of what is usually a tedious and lengthy criminal proceeding in the Philippines criminal justice system. Take the case of Benjaline Hernandez, a woman human rights defender murdered by soldiers and paramilitary forces in Arakan, North Cotabato, in April 2002. The UN Human Rights Committee (UN Doc. CCPR/C/99/D/1559/2007) found that the state violated its obligation to ensure an effective remedy because the trial process had been "unreasonably prolonged." In cases involving former military officials like Palparan, whose actions had support from the government, holding them accountable for killings, disappearance, torture, and arbitrary detention of defenders, has been difficult because of the government's unwillingness or the lack of political will to do so.

This is evident in the joint appeals by the Special Procedures to the Philippines government on 4 July 2011 and 10 November 2011 on cases of targeted attacks on human rights and political activists. On 28 December 2012, the Rapporteurs expressed concern about the "continued reports of alleged killings, threats and harassment of human rights defenders." They also noted the "increased stigmatization of environmental farmers and indigenous rights defenders (including women), in particular those who campaign peacefully against large scale mining." The practice by soldiers to label and accuse defenders as "supporters, sympathizers or members" of communist rebels has continued, despite standing recommendation by the Rapporteur to cease and refrain from the same.

The ALRC reminds the Philippine government regarding the GA Resolution (A/RES/68/181, para. 7, 17) on the "important and legitimate role of women human rights defenders" and ensuring "adequate protection of women defenders." The ALRC is aware of two cases of two women human rights defenders forced to leave their home, the community where they work, and their families, to seek refuge in another place after they being subject to threats, overt surveillance, and questioning by soldiers. They were forced to admit their membership to a communist rebel group. Furthermore, in the case of the Maguindanao massacre, one of the widows of the journalists killed, Myrna Reblando, and her daughter, have had to leave the country for fear of their lives, after a PHP 3 million pesos bounty was put on her head.

In Reblando's case, neither the PCHR nor the PNP were able to provide protection despite the real risk and threat faced. The mother and her daughter have had to leave the country to seek protection. In the Philippines, there is no adequate protection for persons who pursue criminal prosecution against the military and the police. The Witness Protection Programme Act (WPP) can only cover those considered to be witnesses; this does not include victims or persons who pursue criminal prosecution that may face threats.

Apart from Reblando, Florence Manegdeg, an indigenous woman and widow of Jose "Pepe" Manegdeg, a human rights defender, allegedly killed by the military in November 2005, also has not received any form of protection despite repeated appeals. Florence's two daughters have had to endure threats and risk to their life as they pursued prosecution of the soldier in court. The delay in the trial and the lack of protection to the lone witness in the murder has resulted in the dismissal of the case in court.

The ALRC supports the plan of the Special Rapporteur on the situation of human rights defenders to strengthen the mechanism on communication, follow up, and monitoring activities, and to have a dialogue with the government to determine the progress of their pledges to ensure protection of defenders.

The ALRC urges the Council to inquire from the government what progress it has undertaken to prevent violations against defenders and to ensure accountability for those accused of violations. The government must ensure that adequate protection, and its mechanisms, is made known to the public in need.